

Fisheries and Oceans
Canada

Pêches et Océans
Canada

Assistant Deputy Minister

Sous-ministre adjoint

Human Resources &
Corporate Services

Ressources humaines et
Services intégrés

UNCLASSIFIED

2019-003-00216
EKME #: 4036488

MEMORANDUM FOR THE DEPUTY MINISTER

**PUBLIC SERVICE ALLIANCE OF CANADA ON THE DIRECTIVE ON USE OF
ALCOHOL, CANNABIS AND OTHER IMPAIRING SUBSTANCES
(FOR DECISION)**

SUMMARY

On March 18, 2019, you received a letter (Tab 4) from the legal counsel of the Public Service Alliance of Canada (PSAC) demanding that Fisheries and Oceans Canada cease and desist from administering and implementing its "arbitrary, unreasonable and discriminatory cannabis use policy".

Further to a recent review of the Directive, Conservation and Protection (C&P) Management have decided to amend the 28-day prohibition period so that the Directive no longer applies to "safety sensitive positions" and only applies to fishery officers, fishery guardians designated under s.5 of the Fisheries Act employed by the Department, and cadets in the Fishery Officer Career Progression Program (FOCPP). Therefore, the existing Directive will be amended to reflect this change. The Treasury Board Secretariat (TBS) was consulted in the drafting of our response to PSAC and they provided their support.

It is recommended the attached response (Tab 1) be sent to PSAC to inform of the proposed change in the Directive and of the Department's openness to on-going consultation.

BACKGROUND

On October 15, 2018, in anticipation of the legalization of cannabis, the previous Deputy Minister approved the Conservation and Protection (C&P) *Directive on Alcohol, Cannabis and Other Impairing Substances* (Tab 2) and an updated Fishery Officer Conduct section (Tab 3) of the Department's *Values and Ethics Code*.

C&P's Directive is aligned with the policy adopted by the RCMP and the Toronto Police Service in imposing a 28-day restriction on cannabis consumption by fishery officers (FO) and fishery guardians (FG) employed by the Department and cadets in the Fishery Officer Career Progression Program (FOCPP). The restriction is risk-based, health and safety focused, based on

sound science and supported by unique authorities of FOs within the Department who carry arms and/or are authorized to use defensive force.

On March 18, 2019, you received a letter (Tab 4) from a legal officer for the Public Alliance of Canada who alleged that:

- The definition of "safety sensitive" in the policy is both broad and subjective and it impacts the private lives of their members;
- The policy is intrusive on employees' privacy as it requires employees in safety sensitive positions to disclose any potentially unsafe side effects associated with the use of any prescribed or over-the counter medications;
- The policy is both discriminatory and unreasonable as it allows the employer to refer an employee for medical assessment for a wide range of behaviors, and because its definition of "substance abuse disorder" is under-inclusive, failing to extend protections to all persons with substance disabilities; and,
- The policy is discriminatory as it allows screening of fishery officers and employees in safety sensitive positions.

It should be noted that the Department of National Defence, Royal Canadian Mounted Police and Canada Border Services Agency all recently received similar letters from PSAC.

STRATEGIC CONSIDERATIONS

C&P's 28-day abstinence requirement is among the more restrictive standards adopted by Canadian law enforcement organizations. Many police forces (including Vancouver, Ottawa, Montreal and the OPP) have adopted a fit-to-work standard (though the Calgary Police Service policy is zero-tolerance for cannabis). Only the RCMP and the Toronto Police Service, Canada's third largest police force, have adopted the 28-day restriction. Within the federal Public Safety portfolio, the policy of the Correctional Service of Canada (CSC) and the Canada Border Services Agency (CBSA) restricts cannabis consumption to 24 hours before reporting to work.

The C&P Directive is aligned with the RCMP policy based on four key considerations: (i) they train with the RCMP, and have for 41 years, and as such the FOs should also conform to the highest standards of law enforcement safety and professionalism in Canada; (ii) their standards and procedures for firearms and use-of-force are aligned with the RCMP; (iii) in many locations across Canada, particularly in rural and remote areas, they serve side-by-side with the RCMP and often rely on their civil policing mandate to complement our fisheries compliance and enforcement mandate; and (iv) FOs at times, back up the RCMP as auxiliary constables (per the DFO-RCMP Memorandum of Understanding), especially in rural and remote areas.

The risk profile and operational diversity of C&P's FOs is significantly different from that of a municipal police officer, who typically serve with large detachments in urban or semi-urban environments in motor vehicles with back-up only minutes away, or that of CSC officers, who serve in the confines of federal penitentiaries. CBSA officers work at many locations across Canada, including rural and remote ones, but not all officers are armed, the firearms training is

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not the same standard as the RCMP, they are not subject to stand-by or call-up and they are not called to back up the RCMP in an auxiliary role.

In contrast, FOs and FGs serve on multiple platforms (land, sea, air), in multiple environments (urban, rural, remote), from large detachments where back-up is close at hand to minimally staffed detachments in remote areas where back up is hours or days away, and face a wide range of threats wherever they serve (in the last 36 months, FOs have been shot at with firearms, threatened with life-threatening weapons, and assaulted in the course of their duties). The enforcement organization with the closest risk profile to that of C&P is, in fact, the RCMP.

DFO Management is currently revisiting the C&P Directive to apply the prohibition period of 28-days only to FOs. Thus, the 28-day prohibition will no longer apply to safety sensitive positions for two reasons: practicality and parity with many other law enforcement organizations, and risk management theory. The employees in safety sensitive positions do not carry firearms and they are not on the water or on the roads during pursuits. Furthermore, this change will better reflect the position taken by other law enforcement agencies and address PSAC's concerns.

Additionally, TBS received a policy grievance on the C&P Directive on March 27, 2019, alleging that it is an unreasonable and discriminatory policy and constitutes a violation of the Technical Services (TC) collective agreement including Article 6 (Managerial Responsibilities) and Article 19 (No Discrimination). TBS will be in contact with Todd Panas, UHEW National President, to schedule a grievance presentation.

We had discussed the policy grievance with TBS and they asked that we not address it in your response to PSAC. While the policy grievance and response fall under TBS, they have encouraged the Department to continue our consultations with the bargaining agents. TBS has reviewed the draft response found at Tab 1 and have no further comments or concerns with its contents.

It should be noted that only our department has received a policy grievance on their *Directive on Alcohol, Cannabis and Other Impairing Substances*.

INTERDEPARTMENTAL CONSULTATIONS

The RCMP was consulted in the development of the C&P Directive.

EXTERNAL CONSULTATIONS

The consultation process started with the Union of Health and Environment (UHEW) on September 18, 2018, for both the Fishery Officer Conduct and the C&P Directive. The consultation process included both in person meetings as well as subsequent email exchanges.

At the latest National Union Management Consultation Committee (NUMCC) meeting held on November 22, 2018, there was a commitment made at the table to consult the Unions regarding

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departmental policies that relate to the consumption of cannabis and provide an update on the Department's cannabis policies at the spring NUMCC meeting (scheduled for June 20, 2019).

At the National Policy Health and Safety Committee (NPHSC) meeting on March 28, 2019, further consultation on the C&P Directive occurred and it was mentioned that further consultation will occur through an NPHSC ad hoc meeting to be scheduled in the coming months.

With the upcoming legalization of cannabis edibles, drinks and vaping products coming in October 2019, the Department will be initiating a working group to prepare for these changes and will extend an invitation to all bargaining agents. If further policy review is required, then consultation will occur at the NPHSC.


NEXT STEPS

It is recommended that you approve the proposed response (Tab 1) to PSAC informing them of the proposed change in the Directive, and committing to on-going consultation.

The proposed response will be shared with the RCMP and responsively to other enforcement agencies.




Dominic Laporte
Assistant Deputy Minister
Human Resources and Corporate Services



Sylvie Lapointe
Assistant Deputy Minister
Fisheries and Harbour Management

- ☒ I concur with the recommendations
☐ I do not concur with the recommendations



Timothy Sargent
Deputy Minister

MAY 27 2019

Kevin Stringer
Associate Deputy Minister

Attachments: (4)

- 1) Proposed response to PSAC
- 2) C&P Directive on Alcohol, Cannabis and Other Impairing Substances
- 3) Fishery Officer Conduct
- 4) PSAC Letter



Fisheries and Oceans
Canada

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Canada

Deputy Minister

Sous-ministre

Ms. Amy Kishek
Legal Officer
Public Service Alliance of Canada
233 Gilmour Street
Ottawa, Ontario
K2P 0P1

Dear Mrs. Kishek:

Thank you for your correspondence of March 18, 2019, wherein you advised of your concerns with respect to the implementation and contents of the Conservation and Protection Directorate (C&P) *Directive on Use of Alcohol, Cannabis and Other Impairing Substances*.

The Directive was developed in response to the legalization of cannabis in October 2018, with emphasis placed on our specific risks and unique operational diversity, with a focus on health and safety.

Consultations with the bargaining agents were ongoing throughout the revision of the Directive, including outreach by the Director General, Conservation and Protection, the President of Union of Health and Environment Workers (UHEW), and the National Director, Enforcement Affairs of UHEW.

At the latest National Union Management Consultation Committee (NUMCC) held on November 22, 2018, there was a commitment made to continue the consultation regarding the departmental policies relating to the consumption of cannabis and to provide an update at the spring NUMCC, scheduled in June 2019.

We are currently revisiting the Directive and have narrowed the focus of the 28-day prohibition on the consumption of cannabis to include fishery officers and fishery guardians designated under s. 5 of the Fisheries Act employed by the Department, and cadets in the Fishery Officer Career Progression Program (FOCPP). Therefore, the 28-day prohibition will no longer apply to all safety sensitive positions.

There are two main reasons for this change: Practicality and parity with Canada's largest law enforcement organizations (RCMP and Toronto Police Services) and risk management theory. The employees in safety sensitive positions do not go on the level of training exhibited in the FOCPP, carry firearms, and they are not on the water or on the roads during pursuits.

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As mentioned at the National Policy Health and Safety Committee (NPHSC) meeting on March 28, 2019, additional consultations on the C&P Directive, proposed changes and the reasoning behind such changes will occur through the NPHSC in an ad hoc meeting to be scheduled in the coming months.

With the legalization of cannabis edibles, drinks and vaping products coming in October 2019, the Department will be initiating a working group to prepare for these changes and will extend an invitation to all bargaining agents. If further policy review is required, then consultation will occur at the NPHSC.

On a final note, while the emphasis on safety is rooted in the current scientific research, C&P is committed to annually reviewing the Directive and consulting with the bargaining agents on the evolving science and health and safety implications related to the consumption of cannabis or other impairing substances and impairment.

Yours sincerely,

A handwritten signature in dark ink that reads "Tim Sargent." The signature is written in a cursive, slightly slanted style.

Timothy Sargent

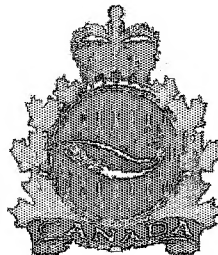
Cc: Sylvie Lapointe, Assistant Deputy Minister, Fisheries and Harbour Management



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Conservation and Protection Directorate



Use of Alcohol, Cannabis and Other Impairing Substances

Directive

Approved by: Darren Goetze
Director General, Conservation & Protection
Original: 2018-10-05
Revised: yyyy-mm-dd

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Canada

1 Purpose

- 1.1 The purpose of this Directive is to promote a safe workplace for all employees and applies to all fishery officers¹, employees, contractors, and volunteers employed by Conservation and Protection.
- 1.2 C&P recognizes that impairment in the workplace is an important safety concern. As per Part II, Canada Labour Code, C&P and its fishery officers and other employees have a shared responsibility to maintain a safe and healthy work environment.

2 Statement

- 2.1 The use of alcohol, cannabis and any other impairing substances by C&P fishery officers and employees shall be guided by the laws of Canada, the Fisheries and Oceans Canada (DFO) Values and Ethics Code, and our shared commitment to health, safety, and well-being of all employees and the communities we serve.
- 2.2 This directive has the objective of supporting the health and safety of C&P's fishery officers and employees, as well as that of the communities they serve, recognizing:
- their unique authorities within DFO to be armed and to use force;
 - the unique and diverse health and safety aspects of fisheries compliance and enforcement operations, intelligence, and marine security that require a high level of risk-assessment, discretion, judgement, discipline, and self-control; and
 - C&P's high standards for safety in the operations of vessels, vehicles and aircraft, the handling of firearms and ammunition, the operation of machinery, and the provision of training.

3 Application

- 3.1 This directive will be updated as needed, based on scientific research and legislation.
- 3.2 Standards specific to the use of cannabis are based on jurisprudence and current science, which has not established quantified limits for safe cannabis consumption in terms of the degree or duration of impairment. Scientific evidence is clear in demonstrating that cognitive impairment (particularly complex executive functions, including decision-making, impulsivity and reaction time) from cannabis use can persist beyond the initial psychoactive effects.
- 3.3 C&P recognizes that substance use can adversely affect safe job performance, conduct, the work environment, and the well-being of the user and of others, and can compromise the safety and security of enforcement activities.
- 3.4 Treatment and support services are available through the Department's Employee Assistance Program or through community resources for any employee who may have a substance use disorder (see Appendix 2 and 3). Employees will be accommodated as much as possible to ensure help is obtained for employees that have substance use disorders.

¹ For the purposes of this Directive, "fishery officers" shall include both fishery officers and fishery guardians designated under s.5 of the *Fisheries Act* and employed by the Department. See Appendix 1 - Definitions.

- 3.5 Violations of this directive could constitute misconduct and result in administrative and / or disciplinary measures, as per the Cannabis Act, the DFO Values and Ethics Code, the terms of applicable employees' collective agreements, and any other related agreement and legislation that apply to an individual's position.

4 Requirements

- 4.1 Fishery officers and employees must report to work fit to perform their duties and carry out their responsibilities, and must not be impaired by drugs, alcohol, or any other impairing substances when on duty or at work.

- 4.2 Off-duty standards for non-medicinal cannabis use are established to ensure employees arrive and remain fit for work to enable the safest possible working conditions C&P and DFO employees and the people and communities with whom they interact.

- 4.3 Fishery officers and employees are required to meet the following standards, as applicable.

4.4 Fitness for Work

- 4.4.1 Fishery officers and employees must report and remain fit for work while on C&P operations, DFO premises, and while on training, standby, or call-back status.

- 4.4.2 Fishery officers and employees must not report for work if they suspect that they are impaired by alcohol, cannabis, or any other impairing substances. In circumstances where an employee feels unfit for their duties, they must report this to their supervisors.

4.5 Non-Medicinal Cannabis Use

- 4.5.1 Fishery officers and employees must make responsible decisions to ensure they are able to report fit for work.

- 4.5.2 Fishery officers who are authorized and do carry a sidearm as part of their duties must abstain from using non-medicinal cannabis at least 28 days prior to reporting to work.

- 4.5.3 Fishery officers and C&P employees on non-enforcement duties must abstain from using non-medicinal cannabis in a manner that would make them unable to report fit for scheduled work.

4.6 Unexpected Call-Back

- 4.6.1 There may be unexpected circumstances where a fishery officer is not on standby or call-back status, but is requested to report for work.

- 4.6.2 If a fishery officer believes they may be unfit for work (i.e. under the influence of an impairing substance or have ingested cannabis within 28 days prior to the call-back) it is their responsibility to decline the call-back.

NOTE: As outlined in section 2.2 of this directive, these standards have the objective of supporting the health and safety of C&P's fishery officers and employees, as well as that of the communities they serve.

4.7 Responsible Use of Medication

- 4.7.1 Fishery officers and employees must use prescribed and over-the-counter medication responsibly, as per their health care provider's recommendation or the manufacturer's instructions.
- 4.7.2 When prescribed a medication with potentially unsafe or impairing side effects, by their treating health care provider, fishery officers must immediately inform their supervisor and must refrain from performing operational duties until assessed by their supervisor or the Public Service Occupational Health Program administered by Health Canada, as appropriate. This will initiate consideration for duty to accommodate measures to be taken for the fishery officer.
- 4.7.3 Fishery officers that have consumed cannabis for medical or recreational uses that are returning to enforcement duties after medical leave will not be placed in an enforcement role for 28 days after last consumption

4.8 Permitted Use of Impairing Substances

- 4.8.1 Use of alcohol, cannabis, and/or other impairing substances is not considered a violation of this directive if it is:
- prescribed or over-the-counter medication on the prescription or recommendation of their health care provider;
 - permitted by operational function in line with C&P policies, such as the Directive on Covert Operations, where consumption arises out of duties authorized by the chain of command and control measures are in place; or
 - in compliance with the DFO Values and Ethics Code.

5 Roles and Responsibilities

5.1 Employees

Fishery officers and employees shall:

- 5.1.1 Read and understand this directive and their responsibilities under it.
- 5.1.2 Report and remain fit for work, and comply with the requirements under section 4 of this directive.
- 5.1.3 Consult with their health care provider for guidance on the safe use of medication and any impact on their ability to safely perform their duties or tasks.
- 5.1.4 Seek advice and follow treatment for a substance use disorder or a related health issue, before job performance is affected or violations of this directive occur.
- 5.1.5 Cooperate with health evaluations by the Public Service Occupational Health Program administered by Health Canada, as applicable, which may include communicating with the treating health care provider on the state of their health.

-
- 5.1.6 Cooperate with any work modification related to safety concerns, and follow recommended monitoring programs during and/or after treatment.
 - 5.1.7 Report any charges or convictions to the supervisor as per the provisions of the Fishery Officer Conduct in the DFO Values and Ethics Code.
 - 5.1.8 Participate and cooperate in any investigation into a violation of this directive.
 - 5.1.9 If a fishery officer or employee suspects a co-worker of a substance use disorder, impairment or related health issue, they are encouraged to advise the appropriate supervisor and/or encourage the co-worker directly to seek assistance. (See Appendix 4 for a description of potential signs of impairment).

5.2 Supervisors

In addition to their roles and responsibilities as employees, supervisors shall:

- 5.2.1 Become familiar with:
 - this directive,
 - the procedures related to this directive,
 - early intervention services, and
 - the signs of possible impairment (refer to Appendix 3 - Additional Resources and Appendix 4 - Signs of Impairment).
- 5.2.2 Monitor for signs of impairment (see Appendix 4) and ensure the compliance of employees and contractors.
- 5.2.3 Refer employees who seek assistance to appropriate resources such as the Employee Assistance Program (see Appendix 2 and 3).
- 5.2.4 When managing employees, if there are concerns about an employee's health or fitness for work, engage DFO Human Resources for further advice on obtaining occupational health recommendations from the employee's treating health care provider or through the Public Service Occupational Health Program.
- 5.2.5 In situations where there is a suspected or confirmed breach of this directive:
 - initiate open and direct communication with that fishery officer or employee and, if warranted, follow the appropriate steps to engage the conduct or disciplinary process; or
 - where there are concurrent issues (e.g. performance management or interpersonal conflict), engage senior managers, DFO Human Resources, Labour Relations advisors, and/or the regional departmental security advisor for expertise.

6 Substance Use Disorder

- 6.1 Fishery officers may be screened for substance use disorders.
- 6.2 If a substance use disorder is suspected, C&P management may require that a health review and assessment be conducted under the Public Service Occupational Health Program

administered by Health Canada, with recommendations on fitness for work, including limitations and restrictions.

7 Compliance and Reporting

7.1 General

7.1.1 Any breach of this directive may constitute a violation of the DFO Values and Ethics Code, and may trigger a security review for cause and the imposition of conduct or disciplinary measures, up to and including dismissal or termination of employment.

7.1.2 If any legislation has been contravened, there may also be legal consequences, and any suspected criminal offence will be reported to the police of jurisdiction.

7.2 Unfit-for-Duty Situations

7.2.1 If, through observation of an employee's conduct, a supervisor has reasonable grounds to suspect that a fishery officer or an employee is, or may be, unfit for work because of use of an impairing substance, the supervisor will meet with the a fishery officer or employee to discuss their observations.

- The meeting should take place in a safe location that ensures confidentiality.
- As part of the discussion of their observations, the supervisor should inform the individual of support measures available and of administrative processes, such as security review for cause and possible disciplinary action.

7.2.2 A fishery officer or employee is entitled to have a union or other trusted representative, or both, present for the discussion, provided that this does not cause undue delay.

7.2.3 Following this discussion, if the supervisor reviewing the circumstances leading to the behaviour still believes the a fishery officer or employee is in a condition unfit for work, they may:

- refer the a fishery officer or employee to a health centre, local hospital, or clinic for medical assistance if there are any medical concerns;
- take any other actions appropriate to the situation including, but not limited to, removing the fishery officer or employee from work, removing the fishery officer's firearm and other defensive tools as per the Directive on Removal and Return of Firearms/Defensive Equipment For Non-Administrative Reasons, temporarily modifying their duties, reassigning them, engaging with Labour Relations, and considering a health evaluation; and/or
- provide the fishery officer or employee with transportation and an escort to a hospital or clinic, depending on the circumstances, and/or transportation to their place of residence or to the care of another adult.

7.2.4 Where the conduct process is engaged, the fishery officer or employee may be subject to interim administrative measures, such as temporary reassignment, suspension, or a security review for cause pending the outcome of the conduct or disciplinary process and/or of an occupational health assessment

7.3 Continuing Employment or Reinstatement Following Non-Compliance

- 7.3.1** Recognizing that substance use disorders can be successfully treated, C&P will support fishery officers and employees with this condition as per the applicable disability management and accommodation policies.
- 7.3.2** Fishery officers and employees in return-to-work situations following a health review and assessment of fitness for work may be required to enter into a relapse prevention agreement (also known as an aftercare agreement) governing their continued employment.
- 7.3.3** In situations where there is a substance use disorder, accommodation and/or return-to-work measures are in place to support reintegration into the workplace.

8 Enquiries

Enquiries regarding these procedures should be directed via email to:

XNCR, CP-Policies-Politiques@dfo-mpo.gc.ca

9 Approval and Signature

(Original signed by Marc Sicard, Acting Director General)

Darren Goetze
Director General
Conservation and Protection

Date

Appendix 1 – Definitions

Alcohol means beer, wine, distilled spirits, or any alcoholic beverage, mixture, or preparation containing alcohol at a concentration of one half of one percent (0.5%) or more.

Cannabis means the substance set out in item 1 of Schedule II to the Controlled Drugs and Substances Act. Cannabis can be consumed by the user in numerous ways, and includes, but not limited to, the following: smoking, vaping, and ingestion.

Conservation and Protection operations mean any work-related requirement or event related to C&P. It includes all situations where an individual is representing or could reasonably be perceived as representing Conservation and Protection, either on or off duty and / or in uniform or not.

DFO premises means, but is not necessarily restricted to, all land, property, structures, installations, vehicles, vessels, planes and equipment owned, leased, operated, or otherwise controlled by DFO.

Employee means individuals employed by the Department of Fisheries and Oceans who are working with Conservation and Protection other than fishery officers. Conservation and Protection contractors and volunteers are expected to respect the intent of this directive.

Fishery officer means a person designated under section 5 of the Fisheries Act as a fishery officer or a fishery guardian and employed by the Department to carry out duties or functions of Conservation and Protection program. For the purpose of this directive, this includes fishery officer cadets, who are those individuals enrolled in the Fishery Officer Career Progression Program.

Fitness for duty means a state in which employees are physically and psychologically capable of safely and competently performing all assigned duties or tasks.

Impairing substance means any substance, illicit or legal, that has the potential to adversely affect the way an individual thinks, feels, or acts, and that may inhibit an individual's ability to exercise judgement and / or perform their job safely to the required standards.

Medication means a drug, as defined in the Food and Drugs Act, obtained legally, either over the counter or with a health care provider's prescription. For the purpose of this directive, the definition shall include cannabis when it is used for medical purposes as per the Access to Cannabis for Medical Purposes Regulations, further to authorization by the user's health care provider.

Substance use disorder means a problematic pattern of using alcohol, cannabis, or any other impairing substance that results in clinically significant impairment of personal and/or professional functioning.

Appendix 2 – Employee Support and Wellness Services

Programs / Services	Available to	Description
<u>Employee Assistance Program (EAP)</u> <ul style="list-style-type: none"> 1-800-268-7708 1-800-567-5803 for persons with a hearing impairment 	All DFO employees and their dependants	<p>The Employee Assistance Program (EAP) is a free, confidential and voluntary short-term psychological counselling service that is offered 24 hours a day, 365 days a year.</p> <p>EAP services are paid for by the employer and are available to managers, supervisors, employees, and their dependants.</p>
<u>Workplace Well-Being</u>	All DFO employees	<p>Workplace Well-Being divides its work into two principal, but separate, advisory roles: (1) supporting employees to fulfil their obligations to serve Canadians according to a framework of values and ethics, and (2) assisting employees to create healthier workplaces by addressing workplace conflict pro-actively.</p>
<u>Labour Relations Centre of Expertise</u>	All supervisors	<p>The Labour Relations Center of Expertise aims to ensure that public service labour-management relations promote sound human resources management, and that collaboration, through communications and sustained dialogue, enhances the public service capacity of the public service, must serve and protect the public interest, while being a performing and productive public service.</p>
<u>Informal Conflict Resolution</u>	All DFO employees	<p>Informal Conflict Resolution is collaborative problem solving using interest-based negotiation principles. Informal conflict resolution services include consultation, conflict coaching, mediations, facilitated discussions, group interventions and workshops on various conflict management topics.</p>

Appendix 3 – Additional Resources

Government of Canada

- [Cannabis impairment](#)
- [Cannabis in Canada](#)
- [Get help with problematic substance use](#)

Health Canada

- [Problematic substance use](#)
- [Controlled and illegal drugs](#)
- [Cannabis](#)

Canadian Centre for Occupational Health and Safety

- [Substance Use in the Workplace](#)
- [Impairment at Work](#)

Employment and Social Development Canada

- [Workplace impairment questions and answers](#)

Appendix 4 – Signs of Impairment

In addition to the observed use or possession of alcohol, illicit drugs, or drug paraphernalia, this table provides signs and symptoms that may be due to problematic substance use (Source: Canadian Centre for Occupational Health & Safety).

Physical	<ul style="list-style-type: none">• deterioration in appearance and/or personal hygiene• unexplained bruises• sweating• complaints of headaches• tremors• diarrhea and vomiting• abdominal/muscle cramps• restlessness• frequent use of breath mints/gum or mouthwash• odour of alcohol on breath• slurred speech• unsteady gait
Psychosocial impacts	<ul style="list-style-type: none">• family disharmony (e.g., how the colleagues speak of family members)• mood fluctuations (e.g., swinging from being extremely fatigued to 'perkiness' in a short period of time)• inappropriate verbal or emotional response• irritability• confusing or memory lapses• inappropriate responses/behaviours• isolation from colleagues• lack of focus/concentration and forgetfulness• lying and/or providing implausible excuses for behaviour
Workplace performance and professional image	<ul style="list-style-type: none">• calling in sick frequently (may work overtime)• moving to a position where there is less visibility or supervision• arriving late for work, leaving early• extended breaks; sometimes without telling colleagues they are leaving• forgetfulness• errors in judgement• deterioration in performance• excessive number of incidents/mistakes• non-compliance with policies• doing enough work to just 'get by'• sloppy, illegible or incorrect work (e.g., writing, reports, etc.)• changes in work quality

FISHERY OFFICER¹ CONDUCT

As fishery officers, we are and continue to be subject to the *Fisheries and Oceans Canada Values and Ethics Code* in its entirety. The following standards of conduct are supplementary to all other expectations² of behaviour already listed in this Code, and are intended to articulate clearly the additional standards that apply to fishery officers.

Fishery officers carry out the Department's enforcement mandate, and are a key contact group between the Department and the public. The professional and personal activities of fishery officers, as law enforcement / peace officers, reflect on the Department and the Government of Canada. As such, as fishery officers, we are expected to conduct ourselves at all times, both on and off duty, in a manner that will not discredit ourselves, the Department or the Government of Canada.

In particular, as fishery officers, we shall:

- 10.1 Demonstrate the highest standard of observance of the laws, including those that we are accountable for enforcing, and refrain from engaging in conduct that may adversely affect, or be perceived to adversely affect, the performance of our duties and our dealings with other law enforcement agencies. We shall inform our supervisor without delay should we be arrested, detained, or charged with any criminal offence or for a violation of the laws that we are accountable for enforcing.
- 10.2 Not perform our duties under the influence of alcohol, cannabis or any other impairing substances, and not to consume alcohol, cannabis or any other impairing substances while in uniform, whether on duty or not, or while on duty, whether in uniform or not. The sole exception shall be that alcohol may be consumed at a special event when in ceremonial uniform with prior authorization by a fishery officer at least one rank senior to the most senior fishery officer attending the special event. Under no circumstances will impairment due to the consumption of alcoholic beverages or cannabis or any other impairing substances be tolerated. If we take any medication that may impair our ability to discharge our duties, we shall inform our supervisor prior to reporting for duty.
- 10.3 Take reasonable steps to avoid conflicts of interest, as defined for all employees in Part 3 of this Code. In particular, we shall:
 - a. Not use our badge, title or authority to exert influence, to obtain for ourselves or grant any other person, group or organization preferential treatment;
 - b. Not participate in commercial fishing or commercial sport fishing activities (see Part 3, Section 2.2 Commercial Activities Related to Fisheries); and,
 - c. Not retain any fish, materials, equipment and/or proceeds obtained or seized in the performance of our duties for our personal use, but always to lawfully dispose of any such goods.

¹For the purposes of this Code, "fishery officers" shall include both fishery officers and fishery guardians designated under section 5 of the *Fisheries Act* and employed by the Department, as well as fishery officer cadets, who are those individuals enrolled in the Fishery Officer Career Progression Program.

²Fishery Officers should consult the *Guidelines on Investigations of Breaches of the Fishery Officer Code of Conduct*.



Public Service Alliance of Canada
Alliance de la Fonction publique du Canada

Headquarters Siège social

BY FACSIMILE
613-993-2194

Ottawa, March 18, 2019

Deputy Minister Timothy Sargent
Department of Fisheries and Oceans
200 Kent Street
Ottawa, ON K1A 0E6

Dear Deputy Minister Sargent:

Re: Policy on Use of Alcohol, Cannabis and Other Impairing Substances

I am legal counsel for the Public Service Alliance of Canada, and in that capacity I have been working closely with the National President of the Union of Health and Environment Workers, Todd Panas. I am writing on behalf of PSAC, UHEW and our members to demand that the Department of Fisheries and Oceans cease and desist from administering and implementing its arbitrary, unreasonable and discriminatory cannabis use policy.

This Policy was developed without consultation with the Union, nor the Occupational Health and Safety Committee. And as a direct result the Policy does nothing for ensuring health and safety, rather it functions to police off-duty conduct, intrude on privacy, and discriminate against our members.

I have had the pleasure of reviewing a number of policies implemented in the recent months across the federal public sector. I can say categorically that the policy put forward by DFO is the most intrusive.

We maintain that the legalization of cannabis should not alter the existing workplace policies.

Please refer to UHEW National President Todd Panas' correspondence dated October 18, 2018 at **Appendix A**.

Below I have outline some of the key offending provisions of the policy.

(a) Safety Sensitive Designation

Workplace rules must be reasonable, consistently applied, and consistent with the collective agreement.¹ Employees' privacy rights are inherently engaged on drug and alcohol policies, and therefore DFO is held to a higher standard when introducing such policies.

Our greatest contention with the Policy is the definition of "safety sensitive" put forward. It is both broad and subjective. It is also not in keeping with the assessment typically undertaken by labour arbitrators, which requires considering both the likelihood of damage or injury flowing from impairment and potential

¹ *KVP Co v Lumber & Sawmill Workers' Union, Local 2537*, [1965] OLAA 2

magnitude of damage or loss, nor is it akin to the definition recommended by the Canadian Human Rights Commission.² By applying an overly broad definition, DFO is indicating that it wishes to exert privacy intrusive measures to positions which are not truly safety sensitive.

The Policy applies different rules to safety sensitive positions, namely restrictions on off-duty conduct. The Policy, for instance, sets out that:

4.6.2 Fishery officers and employees in safety-sensitive positions must refrain from using non-medicinal cannabis at least 28 days before reporting to work.

As you may be aware, labour arbitrators have noted that allowing rules that restrict off-duty conduct would "purport to regulate the private morality of employees without reference to any clearly demonstrated legitimate employer interest".³ Thus we are considerably concerned with the unreasonably broad and arbitrary nature of the safety sensitive designation and how it impacts the private lives of our members.

Provisions addressing off-duty conduct would capture conduct that does not result in impairment in the workplace. In addition to engaging privacy concerns, this overbreadth constitutes discrimination as it would have a greater impact on individuals with disabilities, particularly substance use disabilities.

(b) Right to Private Medical Information

The Policy sets out at paragraph 4.7.2 the obligation for employees in safety sensitive positions to disclose to the employer any "potentially unsafe or impairing side effects associated with the use of any prescribed or over-the counter medications that may impact their ability to perform their duties".

This provision cannot stand. It is not minimally intrusive on employee privacy. Arbitrators have recognized that employees are entitled to insist on confidentiality protections for the information they disclose as part of these types of disclosure provisions.⁴

DFO does not have the right to know a person's confidential medical information, such as the cause of the disability, diagnosis, symptoms or treatment, unless these clearly relate to the accommodation being sought.

(c) Duty to Accommodate

The definition of "substance use disorder" is under-inclusive, failing to extend protections to all persons with substance use disabilities. The DFO Policy defines "substance use disorder" as "a problematic pattern of using alcohol, cannabis, or any other impairing substance that results in clinically significant impairment of personal and/or professional functions." Not only is this definition more restrictive than the definition

² *CEP, Local 707 v Suncor Energy Inc*, 2012 ABCA 373

³ *Canadian National Railway Company v National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, Local 100, 2000 CanLII 29546

⁴ *Vancouver Shipyards*, *supra* at paras 22-23; *Interior Health Authority*, *supra*

of "disability" under the *Canadian Human Rights Act*,⁵ it is also more restrictive than the definition of "substance use disorder" in the DSM-V.

Further, the Policy grants employer the right to demand that employees attend a Health Canada evaluation, which is contrary to the existing case law on the duty to accommodate. See sections 4.7.3, 5.1.5, 5.2.4, 6.2, and 7.3.2 of the Policy. The Employer can only require an employee to attend an examination by a physician of the employer's choosing in exceptional circumstances. Even where the initial medical information from an employee's physician is unclear or insufficient the law requires the employer to attempt to seek clarification from the employee's own physician before it can require the employee to attend an outside evaluation.⁶ By purporting to allow the employer to refer an employee for medical assessment for a wide range of behaviors, the Policy is both discriminatory and unreasonable.⁷

(d) Discriminatory Screening of Employees


The Policy contains provisions allowing "screening" of fishery officers and employees in safety sensitive positions for substance use disorder. Such provisions are plainly discriminatory.

NEXT STEPS

The above is but a mere sampling of the deeply flawed and illegal provisions proffered under this hastily prepared policy.

PSAC reiterates that should DFO continue to enforce and administer this policy in its current iteration, we will pursue all legal options available. We look forward to receiving your response by March 27, 2019.

Yours truly,


Amy Kishek
Public Alliance Service of Canada, Legal Officer
233 Gilmour St, Ottawa, K2P 0P1
613-560-4253
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AK/kb

CC: Chris Aylward, PSAC National President
Todd Panas, UHEW National President
Krista Devine, PSAC General Counsel and Director of Representation and Legal Services

⁵ CHRA, RSC, 1985, c H-6, ss 25

⁶ AG v Grover, *supra*; West Vancouver Firefighters, *supra*; Society of Energy Professionals, *supra*

⁷ Interior Health Authority v Hospital Employees' Union, 2018 CanLII 16964

-APPENDIX A-

Amy Kishek

Subject:

FW: Fwd: URGENT - UHEW's Opposition to DFO's - Directive on the Use of Alcohol, Cannabis and Other Impairing Substances

From: Todd Panas <todd.panas@uew-slc.ca>

Date: Thu, Oct 18, 2018 at 8:59 PM

Subject: URGENT - UHEW's Opposition to DFO's - Directive on the Use of Alcohol, Cannabis and Other Impairing Substances

To: Blewett Catherine <Catherine.Blewett@dfo-mpo.gc.ca>

Cc: Jeff Irwin <jeff.irwin@uew-slc.ca>, Marc Sicard <Marc.Sicard@dfo-mpo.gc.ca>, Dominic Laporte <Dominic.Laporte@dfo-mpo.gc.ca>, Lapointe, Sylvie <Sylvie.Lapointe@dfo-mpo.gc.ca>, Darren Goetze <Darren.Goetze@dfo-mpo.gc.ca>, Julie Lavictoire <julie.lavictoire@uhew-slc.ca>, Shimen Fayad (Council) <Shimen.Fayad@uhew-slc.ca>, Mark Hockley <mark.hockley@uhew-slc.ca>, Luc Paquette <luc.paquette@uhew-slc.ca>, Kim Coles <kim.coles@uhew-slc.ca>, Stephen Vanneste <stephen.vanneste@uhew-slc.ca>, Krista Devine <DevineK@psac-afpc.com>, aylwardc@psac-afpc.com <aylwardc@psac-afpc.com>, Seema Lamba <lambas@psac-afpc.com>

Greetings Deputy Minister,

I hope this urgent email will result in a discussion and review of C + P's new Directive as many officers from Ocean to Ocean to Ocean find very restrictive and infringes on their rights as citizens.

I've already heard however not confirmed officially that two DFO officers were placed on administration duties due to consuming cannabis prior to the next day shifts.

UHEW feels there was not proper consultation with the very tight times lines and we didn't have time to seek legal opinions from the Public Service Alliance of Canada and our Legal Counsel.

Most recently, C&P engaged myself and Jeff Irwin on the development of an internal "Safety Policy/ Directive" for the legalization of cannabis, which, 48 hours prior to introduction - on a weekend - was arbitrarily changed to what appears to be a total prohibition for consumption of cannabis, but does not address alcohol in the same fashion and now both are legal substances to consume by Canadian citizens.

Originally the draft directive stated 24 hours to refrain from cannabis and was changed to 28 days without any consultation.

I have also shared many links with C + P Senior Management on many other law enforcement agencies that have more reasonable

and practicable policies for application. C + P seems to always take a RCMP stance without looking at other alternatives.

This Directive not only aligns with the RCMP policy but we feel it is more a cut and paste approach. The RCMP is a 24-7 and 365 day a year operation of peace officers. Many of their officers are also on 24 hour call so their policy reflects more their current readiness and operations. To mirror this RCMP policy with C + P operations is not a fair comparable with our Fishery Officers. The CBSA policy would be a more equivalent comparison which was ignored. Was this an oversight or was this Directive rushed to have something in place?

I want to emphasize, I'm not a lawyer nor an expert on Cannabis or any other intoxicant. My attempt here is to express our deep concerns under the Canadian Human Rights Commission, and Canadian Charter of Rights and Freedoms and other Federal Departments and Agencies like CBSA who established their policy which is much more fair and reasonable.

Nothing has changed with the legal use of recreational cannabis as there were existing tolerances on alcohol, drugs, and yes cannabis within the Enforcement and Regulatory Communities.

UHEW also feels that this new Directive should've been vetted through the National Joint Occupational Health and Safety Committee before implementation and is in violation of the Canada Labour Code, Part II.

UHEW is in full agreement that this Directive should be about "safety sensitive positions" as per the Canadian Human Rights and less about creating a perceived anti-cannabis policy within C + P.

This Directive should be more about "fit to duty", and impairment and not about zero tolerance.

I also wanted to share with you below CBSA's policy on intoxicants including acceptable use of Intoxicants while on and off duty.

Originally, CBSA mirrored the RCMP policy with a 28 day but after meaningful consultation with the Union changed it to the following:

Furthermore, Individuals occupying safety sensitive positions must refrain from consuming cannabis in any form, for medical or recreational purposes, within 24 hours of reporting for regular duty, standby or overtime

You will see there full policy below which we actually support as a more reasonable approach.

Positive tests only proves there are drugs in your system - not impairment.

Did C + P apply any of the tools for employers on Impaired at Work - a guide to accommodating substance dependence into their Directive by the Canadian Human Rights Commission?

How about duty to accommodate or duty to inquire or when to remove an employee from the work place. We're these factored into the directive under the CHRC?

Were key considerations regarding drug and alcohol testing?

Has the Canadian Charter of Rights and Freedoms been considered with this new directive?

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Finally, I hope we can find a solution for your officers and our members.

Respectfully,

Todd Panas

Effective Date

This policy takes effect on October 17, 2018.

Context

The use of intoxicants in Canadian workplaces is a constant concern for employers. The increased accessibility and social acceptance heightens those concerns. Canadians have high expectations as it relates to Canada Border Services Agency (CBSA) employees as they provide integrated border services that support national

security priorities and facilitate the flow of people and goods across the borders. The use of intoxicants could adversely affect job performance, the work environment, the well-being of individuals, and can compromise the security and the safety of the employer's activities. Furthermore, the legalization of cannabis for recreational purposes and the increased availability of cannabis for medical reasons presents new challenges for the workplace and provides an opportunity for employers to clarify expectations.

The current policy establishes the acceptable use of intoxicants while on and off-duty. Its objective is to provide direction and guidance in alignment with the CBSA's ongoing commitment to foster a respectful workplace as well as the health, safety and well-being of all employees. The CBSA places a high priority on providing the safest possible working conditions, as well as on the safety of those we interact with.

Policy Statement

The Agency's policy is one of zero tolerance for impairment, unauthorized possession or consumption of intoxicants in the workplace for all employees.

Furthermore, individuals occupying safety sensitive positions must refrain from consuming cannabis in any form, for medical or recreational purposes, within 24 hours of reporting for regular duty, standby or overtime.

Scope

The policy applies to all categories of employees, students, and contractors. It

also applies to persons attending meetings or training at a CBSA facility including Officer Induction Training Program (OITP) participants.

Definition(s)

Alcohol: refers to beer, wine and distilled spirits or any alcoholic beverage, mixture or preparation containing alcohol in a concentration of one half of one percent (0.5%) or more.

Cannabis: refers to preparations and derivatives from the cannabis plant, also known as marijuana. These substances can be consumed by the user in numerous ways including smoking, vaping and ingestion.

Drugs: means any substance, including illicit and legal drugs, such as, but not limited to cannabis, where the use of which has the potential to adversely affect the way a person thinks, feels or acts and which may inhibit an individual's ability to perform his or her duties safely and productively.

Impairment: A condition that temporarily affects a person's physical or mental abilities and impedes the ability to safely and effectively perform duties or participate in training.

Intoxicant: refers to alcohol, cannabis or any drugs.

Safety-Sensitive Position: A position in which the consumption of cannabis could result in a serious accident, injury, fatality, or incident affecting the health and/or safety of employees, the public, or the work environment. It includes, for example, positions requiring:

- the use or handling or operation of:
 - defensive equipment including the duty firearm
 - screening or examination equipment
- the operation of a mechanical equipment;
- the examination or handling of suspected or known toxic substances;
- any other position identified by the Vice-President, Human Resources Branch.

Unauthorized possession or consumption of intoxicants:
Possession or consumption of intoxicants without the prior knowledge and approval of Management.

Workplace: refers to location or property where the Agency conducts business or training. It also includes the residence area and surrounding grounds of the training facilities but excludes licensed lounges, where the sale and consumption of alcohol is authorized.

Responsibilities and Accountabilities

Individuals covered by this Policy are responsible for taking the necessary actions and precautions to ensure compliance with the current policy by:

- reporting to work fit for duty;
- not smoking or vaping cannabis in all CBSA workplaces;
- not possessing any cannabis in the workplace;
- not consuming any intoxicant while on standby;

- reporting to their supervisor their requirement to consume drugs for medical purposes;
- reporting any addiction to alcohol, cannabis or drugs; and
- reporting to their supervisor any alleged breach of this Policy.

Furthermore, employees occupying a safety-sensitive position are not to consume any cannabis within 24 hours of reporting for regular duty, standby or overtime.

Supervisors are responsible for:

- applying the requirements of this policy and for ensuring that everyone under their supervision adheres to it;
- familiarizing themselves with the possible signs of intoxicant use or impairment and applying this policy in a discreet, fair and consistent manner;
- ensuring that employees and OITP recruits are fit to perform the duties of their position and have the necessary tools, training, information and supervision;
- addressing inappropriate behaviour and misconduct in a timely way;
- responding to disclosure of potential breach of this policy;
- ensuring that employees who disclose a substance use disorder are referred to the Employee Assistance Program (EAP) Coordinator-Counsellor or their Health Care provider; and
- responding to situations of medical use of cannabis in accordance with the CBSA Policy on Duty to Accommodate.

**Director General, Labour Relations and
Compensation is responsible for:**

- implementing and evaluating the effectiveness of this policy and addressing instances of non-compliance; and
- developing and implementing directives and other policy instruments to support the consistent application of this policy.

**Vice-President, Human Resources
Branch is responsible for:**

- ensuring that employees are informed of this policy and fostering a culture that supports compliance with this policy;
- reviewing and updating the list of safety sensitive position; and
- ensuring that the Agency has the adequate governance, strategies, process and capacity for the implementation of this policy.

Compliance and Reporting

**Individuals who fail to abide by this Policy
will be subject to discipline, up to and
including termination.**

**The Labour Relations and Compensation
Directorate, Human Resources Branch,
will monitor the application of this policy
through the review of the Hazardous
Occurrence Investigation Reports
(LAB1070), Security Incidents Report,
allegations of misconduct reports and
outcomes of disciplinary processes.**

**All Labour Relations work units will keep
records of allegations of non-compliance
with this policy and actions taken to
address them.**

References

- Canada Labour Code, Part II
- Canadian Human Rights Act
- Cannabis Act
- Controlled Drugs and Substances Act
- Financial Administration Act
- CBSA Code of Conduct (PDF, 1.00 MB)
- CBSA Policy on the Duty to Accommodate
- Values and Ethics Code for the Public Sector

Enquiries

Enquiries regarding this policy are to be forwarded to:

Labour Relations and Compensation
Directorate
Human Resources Branch
100 Metcalfe Street, 18th Floor
Ottawa, ON K1A 0L8

Email: LRCD Interpretation DRTR@cbsa-asfc.gc.ca

Sent from my BlackBerry — the most secure mobile device — via the Bell Network